

BEFORE THE
TENNESSEE REGULATORY AUTHORITY

REC'D - TN
REGULATORY AUTH.

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OFFICE OF THE
EXECUTIVE SECRETARY

Application of

Xspedius Management Co. Switched Services, LLC

For a Certificate to Provide Competitive Interexchange
Services on a Facilities and Resale Basis in the State
of Tennessee

Docket No. 02-00716

Co. ID # 128789

APPLICATION

Xspedius Management Co. Switched Services, LLC ("Xspedius" or the "Applicant"), by its undersigned attorneys and pursuant to TENN. CODE ANN. §65-4-201, Chapter 1220-4-8-.02 of the Tennessee Regulatory Authority ("T.R.A.'s") regulations for local telecommunications service providers and other applicable regulations, hereby respectfully requests that the Tennessee Regulatory Authority grant it authority to provide interexchange telecommunications services on a facilities and resale basis throughout Tennessee. In support of its Application, Xspedius states as follows.

I. THE APPLICANT

The Applicant's full name is Xspedius Management Co. Switched Services, LLC. Xspedius is a limited liability company formed under the laws of Delaware. A copy of the Applicant's Certificate of Formation is attached hereto and incorporated herein by reference as *Exhibit A*. The Applicant is currently seeking authorization to operate as a foreign business

entity in Tennessee and will late-file its state qualification document as **Exhibit B** as soon as it is received. The Applicant's principal offices are located at P.O. Box 1116, O'Fallon, MO 63366-1116.

The Applicant's principal corporate officers, located at the same address, are:

- **James C. Allen** Chairman
- **Mark W. Senda** Chief Executive Officer

A copy of the Applicant's organizational chart is attached hereto and incorporated herein by reference as **Exhibit C**. The Applicant's Managers (the equivalent to a corporate Board of Directors) is comprised of the following individuals:

- **James C. Allen**
- **Lawrence C. Tucker**
- **James Monroe III**
- **James F. Lynch**
- **Mark W. Senda**

II. DESIGNATED CONTACTS

The designated contacts for this Application are:

Brad Mutschelknaus
Winafred Brantl
KELLEY DRYE & WARREN LLP
8000 Towers Crescent Drive, Suite 1200
Vienna, VA 22182
(703) 918-2315
(703) 918-2450 (facsimile)
bmutschelknaus@kelleydrye.com
wbrantl@kelleydrye.com

All correspondence, notices, inquiries, orders, and other documents concerning this Application should be sent to the individuals identified above, and copies of same should be served upon the following (which shall not constitute notice):

James C. Falvey
Senior Vice President – Regulatory Affairs
7125 Columbia Gateway Drive
Suite 200
Columbia, MD 21046

The corporate contact for consumer issues or customer complaints is:

Chad Pifer, Esq.
Directory of Regulatory & Legal Affairs
Xspedius
901 Lakeshore Drive
Floor 2
Lake Charles, LA 70601
tel: (337) 312-5240
fax: (337) 310-2976

The Applicant's registered agent in Tennessee is:

Corporation Service Company
2908 Poston Avenue
Nashville, TN 37203

III. QUALIFICATIONS OF THE APPLICANT

As more fully described below, the Applicant has the requisite managerial, technical, and financial qualifications to operate a viable business and provide the services sought to be provided in Tennessee.

Managerial Qualifications. Xspedius has the requisite managerial qualifications to provide telecommunications services in Tennessee. Xspedius' senior managers have extensive experience in running complex and highly successful businesses. They have been involved in operating large communications enterprises providing such services as competitive local exchange service, Internet access, voicemail, broadband, long distance, and other advanced

telecommunications capabilities. Xspedius combines the best of industry-leading management personnel from Xspedius and e.spire, including but not limited to, Xspedius Chairman, James C. Allen; Chief Executive Officer, Mark W. Senda; Senior Vice President, Operations, Ines LeBow; Chief Financial Officer, Daniel Lensgraf; and Executive Vice President, Sales & Marketing, and Senior Vice President, Regulatory Affairs, James C. Falvey. Together, this team has widespread industry experience from inside and outside the competitive telecommunications industry, as explained more fully in the resumes which are attached hereto and incorporated herein by reference collectively as *Exhibit D*.

Technical Qualifications: Xspedius has the requisite technical qualifications to provide telecommunications services in Tennessee. Led by Jim Allen, Mark Senda, and Ines LeBow, Xspedius' technical and engineering specialists have substantial experience in designing, constructing, and operating telecommunications networks. Likewise, they have superior experience in customer service, trouble resolution, switch planning, software development, soft switches, operations support systems, signaling, and other state-of-the-art systems and technologies. Xspedius' technical team's resumes are included among the resumes attached as *Exhibit D*.

Financial Qualifications: Xspedius has the requisite financial qualifications to provide telecommunications services in Tennessee. Xspedius attaches and incorporates herein by reference as *Exhibit E* the *Pro Forma* Balance Sheet of Xspedius Management Co., LLC ("Xspedius Management"), its parent company, for the period ending June 1, 2002.¹ **This information is proprietary and confidential and is submitted under seal with a request for confidential treatment by the T.R.A..** As privately held companies, Xspedius and Xspedius

¹ Additional financial information, as required by the T.R.A., will be late-filed.

Management do not issue annual reports or submit any financial filings with the United States Securities and Exchange Commission, and are not under any obligation to prepare or release public financial statements and ownership information. Because public disclosure of Xspedius' financial information would result in significant competitive and business harm to Xspedius, confidential treatment of Xspedius' financial data is appropriate. In any event, as *Exhibit E* reflects, Xspedius has fully adequate capital resources to provide the proposed services in Tennessee.²

IV. DESCRIPTION OF THE APPLICANT'S NETWORK, SERVICES SOUGHT TO BE PROVIDED, AND AUTHORITY REQUESTED

By this Application, Xspedius seeks authority to operate as a competitive provider of both facilities-based and resale interexchange telecommunications services. Xspedius seeks T.R.A. authorization to provide these services throughout Tennessee. Xspedius will initially provide the following services, which are the same services being provided by ACSI Local Switched Services, Inc., d/b/a e.spire ("e.spire") to its existing customers.

1+ long distance

Audio conference calling

Post-paid calling card

Dedicated toll-free service

Pre-paid calling card service

Directory assistance

²

Applicant acknowledges the bond requirement of TCA §65-4-125 and will ensure that upon approval of this application and the consummation of the transfer of the assets and customer base of American Communications Services of Chattanooga, Inc., dba e.spire, an appropriate bond is filed with the T.R.A., replacing the current bond maintained by the e.spire entities.

The Applicant has no immediate plans to construct interexchange-related facilities at this time, but may undertake such deployment in the future if market conditions or other considerations so dictate. The Applicant will, however, use the existing telecommunications facilities of e.spire in Tennessee in the event that this T.R.A. approves the transfer of e.spire's assets to the Applicant.

V. REPAIR & MAINTENANCE

Xspedius is committed to providing its customers with comprehensive effective customer service. Pending consummation of the e.spire-to-Xspedius transfer, the customer contact telephone number is (800) 937-7473. The address for written communications regarding repair and maintenance is:

Chad Pifer, Esq.
Director of Regulatory & Legal Affairs
Xspedius
901 Lakeshore Drive, Floor 2
Lake Charles, LA 70601

The Tennessee contact person is being determined and contact information will be submitted to the T.R.A. shortly. In the interim, all questions regarding the Company's Tennessee operations may be addressed to Chad Pifer, Esq. at the address above. The T.R.A. will be promptly notified of any changes to this contact information.

VI. PUBLIC INTEREST

The Applicant's entry into the Tennessee competitive telecommunications market will serve the public interest for several reasons. The Applicant will offer high-quality, innovative services to its customers in Tennessee at competitive rates, thus giving the citizens of Tennessee a more economical telecommunications choice. Moreover, the Applicant's presence

in Tennessee will stimulate competition in the telecommunications market. Over time, this will lead to improved service offerings at increasingly competitive prices, to the benefit of a broad range of consumers in Tennessee.

Approval of Xspedius' Application is likewise in the public interest because, in the absence of T.R.A. authorization, e.spire's existing customers in Tennessee potentially could be denied telecommunications services that they currently enjoy from e.spire. As explained elsewhere in this Application and described in a concurrent notification to the T.R.A., Xspedius is arranging to acquire the e.spire Operating Companies' assets and customers pursuant to a court-ordered resolution to the e.spire bankruptcy filings. If the T.R.A. does not grant the instant Application, it is likely that no telecommunications service provider would absorb e.spire's existing customers. In addition, a denial of the instant Application would effectively undo the actions taken by the court and interested parties in the federal bankruptcy proceeding in which e.spire's assets in Tennessee had been auctioned off as part of e.spire's bankruptcy filing. Public interest considerations, therefore, compel that Xspedius' Application be granted.

VII. REGULATORY TREATMENT AND WAIVERS

As a new entrant, Xspedius requests streamlined regulatory treatment afforded similarly situated telecommunications carriers in Tennessee, if appropriate and to the extent such streamlined regulatory treatment is available. Likewise, to the extent the T.R.A. has granted competitive entrants a waiver of certain of the T.R.A.'s rules and regulations, Xspedius respectfully requests that it be granted the same waivers. In any event, Xspedius will comply with the T.R.A.'s rules and regulations and such other laws that generally apply to competitive providers of telecommunications services in Tennessee.

Parish
County of Calcasieu
State of Louisiana

**VERIFICATION OF
MARK W. SENDA**

I, Mark W. Senda, being duly sworn upon oath, do hereby depose and state as follows:

1. My name is Mark W. Senda. I am employed by Xspedius Management Co., LLC ("Xspedius") as Chief Executive Officer. My business address is Xspedius Management Co., LLC, P.O. Box 1116, O'Fallon, MO 63366-1116. I am authorized by Xspedius to make this Verification on its behalf.

2. I declare that I have read the foregoing document and that the facts and any matters stated therein are true to the best of my knowledge, information, and belief.

FURTHER AFFLIANT SAYETH NOT.

Mark W. Senda
Mark W. Senda

SUBSCRIBED AND SWORN TO BEFORE ME this 14 day of June, 2002.

Brenda L. LaCombe
Notary Public

EXHIBIT A

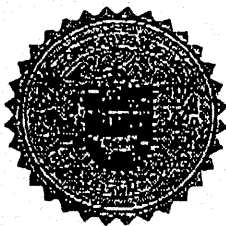
Certificate of Formation

Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "XSPEDIUS MANAGEMENT CO. SWITCHED SERVICES, LLC", FILED IN THIS OFFICE ON THE THIRD DAY OF JUNE, A.D. 2002, AT 9 O'CLOCK A.M.



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

3532220 8100

AUTHENTICATION: 1810381

020355273

DATE: 06-04-02

STATE of DELAWARE
LIMITED LIABILITY COMPANY
CERTIFICATE of FORMATION

- First: The name of the limited liability company is Xspedius Management Co. Switched Services, LLC
- Second: The address of its registered office in the State of Delaware is 2711
Centerville Road Suite 400 in the City of Wilmington, DE 19808
The name of its Registered agent at such address is Corporation Service Company
- Third: (Use this paragraph only if the company is to have a specific effective date of dissolution.) "The latest date on which the limited liability company is to dissolve is _____."
- Fourth: (Insert any other matters the members determine to include herein.)

In Witness Whereof, the undersigned have executed this Certificate of Formation of
Xspedius Management Co.
Switched Services, LLC this 3 day of June, 20 02

BY: _____

Shelli T. Clark

Authorized Person(s)

NAME: _____

Shelli T. Clark

Type or Print

EXHIBIT B

State Corporate Qualification Documents

To Be Late-Filed

EXHIBIT C

Organizational Chart

Xspedius Management Co., LLC
"Xspedius Management Co." is abbreviated as "XMC".

- XMC Switched Services, LLC
- XMC of Birmingham, LLC
- XMC of Mobile, LLC
- XMC of Montgomery, LLC
- XMC of Pinna County, LLC
- XMC of Little Rock, LLC
- XMC of Colorado Springs, LLC
- XMC of D.C., LLC
- XMC of Jacksonville, LLC
- XMC of South Florida, LLC
- XMC of Tampa, LLC
- XMC of Atlanta, LLC
- XMC of Kansas City, LLC
- XMC of Lexington, LLC
- XMC of Louisville, LLC
- XMC of Baton Rouge, LLC
- XMC of Louisiana, LLC
- XMC of Shreveport, LLC
- XMC of Maryland, LLC
- XMC of Jackson, LLC
- XMC of Las Vegas, LLC
- XMC of Albuquerque, LLC
- XMC of Tulsa, LLC
- XMC of Charleston, LLC
- XMC of Chattanooga, LLC
- XMC of Austin, LLC
- XMC of Dallas/Ft. Worth, LLC
- XMC of El Paso, LLC
- XMC of San Antonio, LLC
- XMC of Irving, LLC
- XMC of Virginia, LLC

EXHIBIT D

Management Resumes

James Allen - Chairman

James C. Allen has been a director of WorldCom since March 1998. Mr. Allen is currently an investment director and member of the general partner of Meritage Private Equity Fund, a venture capital fund specializing in the telecommunications industry. Mr. Allen is the former Vice Chairman and Chief Executive Officer of Brooks Fiber Properties where he served in such capacities from 1993 until its merger with WorldCom January 1998. Mr. Allen served as President and Chief Operating Officer of Brooks Telecommunications Corporation, a founder of Brooks Fiber Properties, from April 1993 until it was merged with Brooks Fiber Properties in January 1996. Mr. Allen serves as a director of Completel LLC, Xspedius, LLC, Masergy, Inc., David Lipscomb University and Family Dynamics Institute.

Mark W. Senda - Chief Executive Officer

Mark W. Senda has been a key contributor and leader in the competitive communications industry over the past two decades in North America. He has had an uncanny ability to stay in front of the trends emerging in the rapidly changing communications services sector during a period of pre- and post-deregulation. More recently, as President of Local Services for AT&T Canada, he ran a \$200m+ business unit growing in excess of 100% per annum. AT&T Canada was the successor to MetroNet Communications where Mr. Senda was Chief Operating Officer for Canada's first national competitive communications company. Prior to his work in Canada, Mr. Senda implemented and operated competitive local access and exchange networks in the United States, first with MFS Communications in various progressive management responsibilities leading up to Senior Vice President of Network Services and later with Brooks Fiber Properties as their Senior Vice President of Operations & Engineering. Prior

to 1991, Mr. Senda spent nearly nine years with MCI Communications Corp. in various management roles. During this time, he was a key team member responsible for deploying MCI's enhanced messaging systems and services worldwide. Mr. Senda holds a BS in Business from The University of the State of New York and a MS in Telecommunications Policy from The George Washington University.

Dan Lensgraf – Chief Executive Officer

Daniel Lensgraf currently serves as Chief Financial Officer of Xspedius, LLC joined Xspedius in August 2000, as Chief Financial Officer. In this capacity, he is responsible for all financial operations of the company. Lensgraf also plays a key role in the day-to-day, business development, and strategy of the company. From August 1995 until joining Xspedius, Lensgraf served as Chief Financial Officer of Satelink Communications, Inc.; an Atlanta based communications provider. During his tenure with Satelink, Lensgraf facilitated thirteen acquisition transactions and was involved in numerous debt and equity fund raising transactions.

Lensgraf earned a Bachelor's Degree in Business Administration from the University of Oklahoma and an MBA from Duke University.

Ines LeBow – Senior Vice President, Operations

Ms. LeBow has twenty years experience in management, operations, engineering, finance and project management in telecommunications, wireless, long distance, competitive access and competitive local exchange. In her last position, Ms. LeBow was Executive Vice President, Operations and Engineering at Conversent Communications; in that capacity, she developed a six-state region in the Northeast, managed the P&L, set company policy, deployed switches, established service delivery flows and OSS systems, built a Network Management Center, created a switched-services field organization and customer service. Former positions include

Vice President, Global Network Operations for Viatel, a multinational long distance carrier; with management responsibility for 150 people in 14 cities worldwide. At Brooks Fiber Communications, Ms. LeBow served as Vice President, Implementation with responsibility for 22 new cities. Prior to Brooks, Ms. LeBow has similar responsibilities at MFS, GTE Spacenet and Contel ASC.

Ms. LeBow is a graduate of American University, Washington, DC and received a MA. in Languages and Linguistics and a MA. in Administration and Education.

Michael Miller – President, Xspedius Management Co. Network Technologies, Inc.

Michael P. Miller is currently serving as President of ACSI Network Technologies, Inc., **e.spire's** network design, construction and consulting subsidiary, a position he has held since January 2000. He previously served as ACSI Network Technologies' Senior Vice President, responsible for sales and operations support system outsourcing. He joined **e.spire** in 1996 to assume the position of Regional Vice President and General Manager, responsible for sales and operations in the eastern United States. Before joining **e.spire**, he was Senior Vice President for Sales and Marketing for Trescom International. Mr. Miller has also held positions with ITT-USTS and LDDS (now, MCI/WorldCom). He has more than 19 years of management experience with telecommunications companies.

Randall Muench – Executive Vice President of Sales and Marketing

Randall P. Muench is currently serving as **e.spire** Executive Vice President, Sales and Marketing, and manages the retail and wholesale sales force, alternate channels, customer service, technical consulting and training. Mr. Muench is also responsible for product marketing, brand marketing, new media and **e.spire's** outbound marketing programs. He was promoted to

this position in January 2000. He previously served as Senior Vice President, Sales and Marketing and Vice President of Marketing. He joined **e.spire** in March of 1998 as Vice President of Sales Operations and Customer Service. Before joining **e.spire**, Mr. Muench was Director of Marketing and Finance for MCI's State Government and University Markets, a position he held for three years

James C. Falvey – Senior Vice President of Regulatory Affairs

James C. Falvey is currently serving as **e.spire** Senior Vice President of Regulatory Affairs and is responsible for federal regulatory and legislative matters, state regulatory proceedings and complaints, and municipal rights-of-way issues. He was promoted to his current position in March 2000. He joined **e.spire** in May 1996 as Vice President of Regulatory Affairs and has been instrumental in developing regulatory strategy; establishing interconnection agreements; pursuing reciprocal compensation and other regulatory complaints; managing certification, franchise, and compliance issues; and advocating **e.spire's** interests relating to regulatory and policy matters. Prior to joining **e.spire**, Mr. Falvey practiced law with the Washington, D.C. law firm of Swidler & Berlin, where he represented competitive local exchange providers in state and federal proceedings. Prior to his employment at Swidler & Berlin, Mr. Falvey practiced antitrust litigation in the Washington office of Johnson & Gibbs, and worked as a legislative assistant for Senator Harry M. Reid of Nevada. He is a *cum laude* graduate of Cornell University, received his law degree from the University of Virginia School of Law, and is admitted to practice law in the District of Columbia and Virginia. He is a member of the CompTel Board of Directors and ALTS Operating Board.

EXHIBIT E

Financial Information

PROPRIETARY & CONFIDENTIAL

FILED UNDER SEAL